FARAD CONTINUATION SHEET.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH : NAGPUR.

WRIT PETITION NO.5454/2005

United India Insurance Company Limited

...Versus...

Jayaswals Ashoka Infrastructure Private Limited and others

Office Notes, office Memoranda of Coram appearances, Court's orders or directions and Registrar's order.	Court's or Judge's order

CORAM: **B.P. DHARMADHIKARI, J.**
DATED : **21.12.2005.**

1. Heard Advocate Shri Anand Parchure for petitioner and Advocate Shri S.P.Dharmadhikari for respondent no.1.

2. The grievance is that on 8.1.2004 petitioner-company filed proceedings against award of arbitrator dated 10.10.2003 before the original side of this Court at Bombay. On 21.10.2004 the proceedings were withdrawn with liberty to move the same before the District Judge at Nagpur and accordingly on 17.1.2005 the proceedings were filed here. On 29.9.2005 the learned District Judge has by impugned order held that the proceedings are presented beyond period

prescribed under section 34 of Arbitration Act and dismissed the application under section 14 of Indian Limitation Act 1963. Said order is challenged before this Court in present writ petition.

3. In W.P. Nos.5422/2005 and 5423/2005 this controversy has been considered by me by order dated 19.10.2005. Those petitions were dismissed holding that section 14 of Indian Limitation Act is applicable.

4. The said order was challenged in L.P.A. No.279/2005 and the Division Bench of this Court has on 5.12.2005 dismissed these two L.P.As.

5. Advocate Shri Parchure by pointing out this fact invited attention of this Court to the two judgments of the Hon'ble Apex Court. The first judgment is reported in 2004 Vol. I SCC page 540 between National Aluminium Co. Ltd....Versus...Pressteel & Fabrications (P) Ltd. and another. He invites attention to discussion as contained in paragraph nos. 11 and 12 and states that in paragraph no.12 the Hon'ble Apex Court has observed that the delay can be condoned as the time was consumed in bona fide prosecution of the application before wrong forum. He also invites attention to the judgment reported in 2005 Vol. 4 SCC page 239 between Union Of

India...Versus...Tecco Trichy Engineers & Contractors, paragraph no.12 wherein again similar observations in relation to Indian Limitation Act are made. He contends that thus the Hon'ble Apex Court has accepted the applicability of Limitation Act to proceedings under section 34. As against this Advocate Shri Dharmadhikari appearing for respondent no.1 states that in so far as the judgment reported at 2004 vol. I SCC 540 (supra) is concerned, it is considered by the Division Bench of this Court in First Appeal No.544/2005 and in judgment dated 20.7.2005 this Court found that the said judgment is not authority for holding that provisions of section 14 of Indian Limitation Act would apply to these proceedings. He further points out that the judgment of Division Bench of this Court reported in 2005 Vol. III Mh.L.J. 951 on which this Court has relied while delivering the earlier order dated 19.10.2005 (supra), has been upheld by the Hon'ble Apex Court in Petitions for Special Leave to Appeal (Civil) having Nos.20326 -20327/2003 on 14.11.2003. He states that thus the law on the point is well settled in so far as the Bombay High Court is concerned.

6. It is apparent that in view of order dated 14.11.2003 mentioned above passed in case between H.M.P Engineers Ltd.

and others-Versus-Ralies India Ltd. and another, issue of limitation is settled. Hence it is not possible for this Court to take different view of the matter. The law and view as laid down in the order dated 19.10.2005 in W.P. Nos.5422/2005 and 5423/2005 therefore does not warrant any change. The writ petition is therefore dismissed. No costs.

7. Advocate Shri Parchure makes a request to consider the submission made by respondent no.1 to maintain status-quo as on today for further period of four weeks. Advocate Shri Dharmadhikari states that he has no instruction in this respect. However, he opposed the request. Considering the position, in the interest of justice parties are directed to maintain status-quo as on today for further period of four weeks.

JUDGE

SSW